

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND, NORTHERN DIVISION

CARVET CARLYLE,

Plaintiff,

v.

THE TRAVELERS HOME AND MARINE
INSURANCE COMPANY,

Defendant.

CIVIL NO.: WDQ-13-2964

* * * * *

MEMORANDUM OPINION

Carvet Carlyle sued The Travelers Home and Marine Insurance Company ("Travelers") in the Circuit Court for Baltimore City for breach of contract. ECF No. 2. Travelers removed to this Court. ECF No. 1. Pending is Travelers's motion for reconsideration of the Court's June 5, 2014 Order denying its motion to dismiss Count II of Carlyle's Second Amended Complaint as moot, and granting Carlyle's motion for leave to file a third amended complaint. ECF No. 38.¹ No hearing is necessary. Local Rule 105.6 (D. Md. 2014). For the following reasons, Travelers's motion for reconsideration will be denied.

¹ The Court's Order also granted Travelers's motion for leave to file a surreply. ECF No. 38.

I. Background²

A. Facts

Since August 11, 1999, Carlyle³ has owned a home at 4124 Marx Avenue in Baltimore, Maryland (the "Baltimore home"). ECF No. 36 ¶ 4. Beginning in 2005, Carlyle rented her home to a tenant. *Id.* ¶ 7.⁴ On September 25, 2009, Carlyle purchased a homeowner's insurance policy from Travelers for the period of September 25, 2009 through September 25, 2011 (the "Policy"). *Id.* ¶ 5. Carlyle paid all the premiums due under the Policy. *Id.* ¶ 6.

In February 2010, Baltimore "experienced a massive, and largely unprecedented, winter snowstorm that deposited between 2 and 3 feet of snow." *Id.* ¶ 8. During and after the storm, the Baltimore home sustained damage to the "roof, siding, water

² The facts are from the third amended complaint, ECF No. 36, and Travelers's motion for leave to file a surreply, ECF No. 33-2. When a party seeks dismissal for lack of subject matter jurisdiction, the court may look "beyond the pleadings" to the submitted evidence to determine if jurisdiction exists. *Khoury v. Meserve*, 268 F. Supp. 2d 600, 606 (D. Md. 2003) *aff'd*, 85 F. App'x 960 (4th Cir. 2004).

³ Carlyle suffers from a disabling medical condition that causes her to have occasional seizures and require assistance from a full-time caregiver. ECF No. 36 ¶ 60.

⁴ The amended complaint does not expressly state whether Carlyle shared her home with the tenant. However, that Carlyle has been forced to pay rent elsewhere because--as of March 2010--the home was not "suitable for use as a primary residence" or as a rental property, *id.* ¶¶ 58-59, suggests that Carlyle shared the home with the tenant until March 2010.

pipes, ceilings, walls, floors, fixtures, and personal items" because of the "extreme weather conditions." *Id.* ¶¶ 9-10. Also in February 2010, someone broke into the Baltimore home, stole Carlyle's personal property, and caused more damage to the home. *Id.* ¶ 11.

On March 1, 2010, Carlyle reported the property damage and theft to Travelers. *Id.* ¶ 13. Travelers assigned three claim numbers to Carlyle's report--one to the damaged water pipes; one to the damaged roof and siding; and one to the burglary. *Id.* ¶¶ 14-16. Each claim had a \$1,000 deductible. *See id.* ¶¶ 36, 42. Because the snowstorm damage claims "arose out of the same occurrence"--and should have been considered one claim--Travelers improperly obtained two deductibles from Carlyle for snowstorm-related loss. *See id.* ¶ 36.

Travelers inspected the Baltimore home and initially concluded that the pipe leaks were unrelated to the snowstorm. *Id.* ¶ 17. However, Travelers later paid Carlyle \$2,365.89⁵ for replacing the pipes; this amount is far less than Carlyle's multiple third-party estimates of the actual cost of replacing the pipes. *Id.* ¶¶ 18-20. "Travelers knew or should have known that no contractor would undertake the repairs for the estimated cost of repair." *Id.* ¶ 21.

⁵ Travelers estimated the cost of replacement to be \$3,558.37, from which it subtracted \$192.48 in recoverable depreciation and the \$1,000 deductible. ECF No. 36 ¶ 18.

Because Travelers and Carlyle continued to dispute whether other water damage caused by the damaged pipes resulted from the snowstorm, Carlyle "was forced to obtain an independent plumber." *Id.* ¶¶ 22-23. The plumber concluded that water damage to the basement and other parts of the Baltimore home was attributable to the snowstorm. *Id.* ¶ 23. This new information prompted Travelers to re-inspect the home. *Id.* ¶ 24. Although Travelers then recognized that the additional water damage was caused by the snowstorm, it did not increase its payment to Carlyle. *Id.* ¶¶ 24-25. Instead, Travelers assigned its Special Investigations Unit ("SIU") to extensively investigate Carlyle's "personal affairs to determine whether any exclusion under the terms of the Policy might apply." *Id.* ¶ 25. The SIU investigation requested "extensive and unreasonable amounts of documentation" from Carlyle, including, *inter alia*, her income tax returns, proof of her income, and disclosure of her bank accounts and creditors. *Id.* ¶ 51. During the investigation, Travelers also made "offensive and unsubstantiated . . . accusations" about Carlyle, including that she "neglected her property and allowed squatters to reside in her home." *Id.* ¶ 52.

As a result of the delayed repairs to the water damage caused by Travelers's "continued reluctance to provide adequate compensation," mold developed in the Baltimore home. *Id.* ¶ 32.

Although Carlyle reported the "resultant mold growth"--which was covered by the Policy--to Travelers, it did not increase payment to Carlyle and instead assigned the SIU to determine if an exclusion applied. *Id.* ¶¶ 33-35. Since March 2010, because of the mold growth, the Baltimore home has been uninhabitable, forcing Carlyle to lose rental income from her tenant and to move elsewhere and pay monthly rent. *See id.* ¶¶ 58-59.

Travelers also paid Carlyle \$3,122.02⁶ for the damage to the siding and roof. *Id.* ¶ 26. Carlyle contested Travelers's valuation of the damage, and Travelers issued an additional payment of \$1,107.74. *Id.* ¶ 27. Even with this second payment, Travelers's repair estimate was far less than Carlyle's multiple third-party estimates of the cost of repairing the damage to the home. *See id.* ¶¶ 28-29. "Travelers knew or should have known" that Carlyle would not be able to obtain the needed repairs for Travelers's estimated cost of repair. *Id.* ¶ 30.

On March 5, 2010, Carlyle filed a police report about the stolen property. *Id.* ¶ 39. Although Carlyle provided Travelers "numerous photos, lists and receipts to substantiate the loss," Travelers claimed that she had not sufficiently documented her loss. *See id.* ¶¶ 40-41. Travelers eventually paid Carlyle

⁶ Travelers estimated the cost of replacement to be \$4,958.28, from which it subtracted \$836.26 in recoverable depreciation and the \$1,000 deductible. ECF No. 36 ¶ 18.

\$2,236.67 for the missing items and \$1,397.20⁷ for damage caused by the break-in. *Id.* ¶ 42. These payments were far less than the amount of actual damage and loss, and Carlyle was unable to find a contractor willing to fix the property damage for Travelers's estimated cost of repair. *See id.* ¶¶ 43-45. Travelers "knew or should have known" that these payments were insufficient. *Id.* ¶¶ 46-47.

On May 21, 2012, Travelers issued a final determination letter for Carlyle's snowstorm-related damage claims, which "refused to indemnify [Carlyle] to the full extent of her damages." *Id.* ¶ 54. On November 14, 2012, Carlyle submitted a complaint to the Maryland Insurance Administration ("MIA"), asserting that Travelers had improperly denied coverage. ECF No. 33-2 at 1.⁸ On December 4, 2012, Travelers issued a second final determination letter, which "denied full coverage for the February burglary." ECF No. 36 ¶ 55.

⁷ Travelers estimated the cost of repair to be \$2,397.20, from which it subtracted the \$1,000 deductible. ECF No. 36 ¶ 42.

⁸ The complaint to the MIA addressed all three claims. ECF No. 33-2 at 1. Carlyle contended, *inter alia*, that Travelers was "untruthful with [her] during the claim investigations and settlements." *Id.*

B. Procedural History

On February 5, 2013, Carlyle, *pro se*, sued Travelers and others⁹ in the Circuit Court for Baltimore City. ECF No. 2. On April 26, 2013, in response to Travelers's motion for a more definite statement, Carlyle filed an amended complaint. ECF Nos. 6, 7. On August 7, 2013, the MIA issued a final determination letter ("MIA Letter") concluding that "Travelers has not violated Maryland insurance law in its handling of [Carlyle's] claims." ECF No. 33-2 at 1. The MIA had "focused its review" on § 4-113¹⁰ ("denials, refusals to renew, suspensions, and revocations") and § 27-303¹¹ ("unfair claim settlement practices") of the Maryland Insurance Article. *Id.* at 9.¹²

⁹ Travelers is the only remaining defendant; the other defendants were dismissed before the case was removed to this Court. ECF No. 24 at 1.

¹⁰ This provision governs the circumstances under which an insurer's certificate of authority may be denied, suspended, or revoked. See Md. Code Ann., Ins. § 4-113 (West 2001).

¹¹ This provision defines "unfair [insurance] claim settlement practice[s]," which include "misrepresent[ing] pertinent facts or policy provisions that relate to the claim or coverage at issue" and "fail[ing] to provide promptly on request a reasonable explanation of the basis for a denial of a claim." Md. Code Ann., Ins. § 27-303 (West 2014).

¹² Although the MIA Letter only cites sub-sections (1), (2), and (6) of Ins. § 27-303--which do not discuss the good faith requirement--the letter expressly states that "Travelers' actions have not been shown to be arbitrary and capricious, to

On September 19, 2013, Carlyle--through counsel--filed a second amended complaint alleging breach of contract (Count I) and torts arising from breach of contract (Count II).¹³ ECF No. 18. On October 8, 2013, Travelers removed to this Court on the basis of diversity jurisdiction¹⁴ and answered the complaint. ECF Nos. 1, 21.

On November 13, 2013, Carlyle moved for leave to file a third amended complaint. ECF No. 30. The proposed amended complaint deletes Count II and supplements Count I with a claim for attorneys' fees for Travelers's alleged failure to act in good faith in denying insurance coverage under Md. Code Ann., Cts. & Jud. Proc. § 3-1701(e)(2) (West 2007). See ECF No. 30-2 ¶¶ 66-79. On November 18, 2013, Travelers opposed the motion. ECF No. 31. On December 3, 2013, Carlyle replied. ECF No. 32. On December 11, 2013, Travelers moved unopposed for leave to file a surreply. ECF No. 33. On June 5, 2014, the Court granted Carlyle's motion for leave to file a third amended complaint, denied as moot Travelers's motion to dismiss, and

be lacking in good faith or to otherwise be in violation of the Insurance Article." ECF No. 33-2 at 9.

¹³ On October 8, 2013, Travelers moved to dismiss Count II for failure to state a claim. ECF No. 22. Carlyle consented to the dismissal and has deleted Count II in her proposed third amended complaint. ECF No. 28 at 1. Because the Court will grant Carlyle leave to file the third amended complaint, see *infra* Section II.B, the motion to dismiss will be denied as moot.

¹⁴ See 28 U.S.C. § 1332(a).

granted Travelers's motion for leave to file a surreply. ECF No. 35.

On June 17, 2014, Travelers moved for reconsideration of the Court's June 5, 2014 Order granting Carlyle's motion for leave to file a third amended complaint and denying Travelers's motion to dismiss Count II. ECF No. 38. On June 27, 2014, Carlyle opposed Travelers's motion. ECF No. 39.

II. Analysis

A. Legal Standard for Motion for Reconsideration

Motions for reconsideration of an interlocutory order are governed by Fed. R. Civ. P. 54(b), under which "any order . . . may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Fed. R. Civ. P. 54(b).¹⁵ Thus, when warranted, a district court retains the power to reconsider and modify its interlocutory judgments at any time before final judgment. *Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 514-15 (4th Cir. 2003).¹⁶ Resolution of the motion is "committed to the

¹⁵ See *Mateti v. Activus Fin., LLC*, No. DKC-08-0540, 2009 WL 3633339, at *4 (D. Md. Oct. 27, 2009).

¹⁶ "Motions for reconsideration of interlocutory orders are not subject to the strict standards applicable to motions for reconsideration of a final judgment." *Am. Canoe*, 326 F.3d at 514 (citing 11 James Wm. Moore et al., *Moore's Federal Practice* § 56.04[3] (3d ed.) ("Rule 60(b) does not govern relief from interlocutory orders")); see also *Fayetteville Investors v. Commercial Builders, Inc.*, 936 F.2d 1462, 1469 (4th Cir.

discretion of the district court," *id.* at 515, and "the goal is to reach the correct judgment under law." *Netscape Commc'n Corp. v. ValueClick, Inc.*, 704 F. Supp. 2d 544, 547 (E.D. Va. 2010) (internal citations omitted).

B. Travelers's Motion

Travelers argues that the Court committed clear error when it granted Carlyle's motion for leave to file a third amended complaint, permitting her to add a claim for attorney's fees under Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 3-1701, because "she has not exhausted her administrative remedies." ECF No. 38 ¶¶ 1-2.¹⁷ Specifically, Travelers argues that Carlyle cannot file a complaint alleging failure to act in good faith under CJP § 3-1701 because she has not obtained a final decision from the MIA under § 27-1001¹⁸ of the Insurance Article. *Id.* at 4-6. According to Travelers, because Carlyle filed a complaint with the MIA under Ins. § 27-303--and not under Ins. § 27-1001-- she has failed to exhaust her administrative remedies. *Id.*

Section 3-1701 authorizes recovery from insurers for actual damages and "[e]xpenses and litigation costs . . . including

1991) ("An interlocutory order is subject to reconsideration at any time prior to the entry of a final judgment.").

¹⁷ According to Travelers, "[b]ecause the Third Amended Complaint should be stricken, the Second Amended Complaint controls," and, thus, the Court should reconsider the motion to dismiss Count II of the Second Amended Complaint. ECF No. 38 ¶ 8.

¹⁸ Md. Code Ann., Ins. § 27-1001 (West 2007).

reasonable attorney's fees" if an insured prevails on a claim of improper denial of coverage, and the "insurer failed to act in good faith" in declining payment. See § 3-1701(a)(4), (e); *Thompson v. State Farm Mut. Auto. Ins. Co.*, 9 A.3d 112, 114 (2010). To bring an action under this statute, the insured must comply with the exhaustion provisions of Ins. § 27-1001.¹⁹ Section 27-1001(d)(1) states that a "complaint stating a cause of action under § 3-1701 of the Courts Article shall first be filed with the MIA." The complaint must "specify the applicable insurance coverage[,] the amount of the claim under the applicable coverage[,] the amount of actual damages, and the claim[ed] expenses and litigation costs." Ins. § 27-1001(d)(2).²⁰

A court's discretion to review an interlocutory order is "not subject to the strict standards applicable to motions for

¹⁹ Section 27-1001 "applies only to actions under § 3-1701." Ins. § 27-1001(b).

²⁰ Under section 27-1001(c)(2), the exhaustion requirement does not apply to an action:

- (i) within the small claim jurisdiction of the District Court under § 4-405 of the Courts Article;
- (ii) if the insured and the insurer agree to waive the requirement under paragraph (1) of this subsection; or
- (iii) under a commercial insurance policy on a claim with respect to which the applicable limit of liability exceeds \$1,000,000.

Ins. § 27-1001(c)(2)(i)-(iii).

reconsideration of a final judgment,"²¹ but is "within the plenary power of the Court . . . to afford such relief . . . as justice requires."²² Although Rules 59(e)²³ and 60(b)²⁴ do not govern reconsideration of an interlocutory order, the Fourth Circuit has suggested that at least parts of those rules may guide a court's analysis.²⁵ In considering whether to revise

²¹ *Am. Canoe Ass'n v. Murphy Farms, Inc.*, 326 F.3d 505, 514 (4th Cir. 2003).

²² *Fayetteville Investors*, 936 F.2d at 1473 (internal citation and quotation marks omitted).

²³ Under Rule 59(e), a motion to alter or amend a final judgment may be granted only "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998).

²⁴ Under Rule 60(b), a court may grant relief from a judgment or order for: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud or misconduct by the opposing party; (4) voidness; (5) satisfaction; or (6) any other reason that justifies relief. Fed. R. Civ. P. 60(b).

²⁵ See *Fayetteville Investors*, 936 F.2d at 1470, 1472 (declining to "thoroughly express our views on the interplay of Rules 60, 59, and 54" but citing *Gridley v. Cleveland Pneumatic Co.*, 127 F.R.D. 102 (M.D. Pa. 1989), in which Rule 60(b) guided the court's reconsideration of an interlocutory order); *Pritchard v. Wal-Mart Stores, Inc.*, 3 F. App'x 52, 53 (4th Cir. 2001) (per curiam) (citing an earlier case applying Rule 60(b) to hold that a district court did not err in denying a motion to reconsider an interlocutory order); see also *Superior Bank, F.S.B. v. Tandem Nat'l Mortg., Inc.*, 197 F. Supp. 2d 298, 332-39 (D. Md. 2000) (guided by Rules 59(e) and 60(b), court declined to amend interlocutory order because movant had presented no new facts and had failed to show that other cases dictated a different result).

interlocutory decisions, district courts in this Circuit have looked to whether movants presented new arguments²⁶ or evidence,²⁷ or whether the court has "obviously misapprehended a party's position or the facts or applicable law."²⁸

The Court's June 5, 2014 Memorandum Opinion concluded that Carlyle had exhausted her administrative remedies because "the MIA expressly considered whether Travelers acted in good faith--as defined in § 27-1001--in denying Carlyle's claim." ECF No. 34 at 12. In reviewing Carlyle's claims for unfair settlement practices under Ins. § 27-303, the MIA concluded that "Travelers' actions have not been shown to be arbitrary and capricious, to be lacking in good faith or to otherwise be in violation of the Insurance Article." ECF No. 33-2 at 9 (emphasis added). Sub-section nine of § 27-303 defines an "unfair claim settlement practice" as a "fail[ure] to act in good faith, as defined under § 27-1001 of this title, in settling a first-party claim under a policy of property and

²⁶ See, e.g., *McLaurin v. E. Jordan Iron Works, Inc.*, 666 F. Supp. 2d 590, 596 (E.D.N.C. 2009) ("Generally, motions to reconsider are not appropriate vehicles to advance arguments already rejected by the Court or new legal theories not argued before the ruling.") (internal quotation marks omitted), *aff'd*, 410 F. App'x 630 (4th Cir. 2011).

²⁷ *United States v. Duke Energy Corp.*, 218 F.R.D. 468, 474 (M.D.N.C. 2003).

²⁸ *Duke Energy Corp.*, 218 F.R.D. at 474 (internal quotation marks omitted).

casualty insurance." Ins. § 27-303(9). Section 27-1001 defines "good faith" as "an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insurer made a decision on a claim." Ins. § 27-1001(a) (emphasis added).²⁹

Though Travelers contends that Carlyle's MIA complaint never asserted that it had failed to act in good faith, ECF No. 38-1 at 7, Carlyle's MIA complaint contended that Travelers was "untruthful with [her] during the claim investigations and settlements," ECF No. 33-2 at 1. Section 27-1001 requires the insured to file a complaint before the MIA that describes the insurance coverage and the amounts of the claim and damages; "it requires nothing more." *Fakhoury v. Great N. Ins. Co.*, No. CIV. WDQ-12-0268, 2012 WL 1554487, at *3-*4 (D. Md. Apr. 30, 2012) (citing Ins. § 27-1001(d)(2)). Carlyle's assertion of bad faith--by way of reference to Travelers's alleged dishonesty--and the MIA's explicit consideration of whether Travelers failed to act in good faith, are sufficient to find that Carlyle has adequately exhausted her administrative remedies.³⁰ Accordingly,

²⁹ "Good faith" has the same definition under § 27-1001(a) and § 3-1071(a)(4).

³⁰ See *Fakhoury*, CIV. No. WDQ-12-0268, 2012 WL 1554487, at *4 ("The Fakhourys satisfied § 27-1001 by filing a complaint that challenged GNI's good faith, and noted the applicable coverage, amount of the claim, amount of actual damages, and sought expenses and litigation costs.") (footnote omitted).

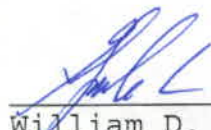
the Court did not "obviously misapprehend[] . . . the . . . applicable law"³¹ when it concluded that Carlyle had exhausted her administrative remedies.³²

III. Conclusion

For the reasons stated above, Travelers's motion for reconsideration will be denied.

Date

11/19/14


William D. Quarles, Jr.
United States District Judge

³¹ *Duke Energy Corp.*, 218 F.R.D. at 474 (internal quotation marks omitted).

³² *See McLaurin*, 666 F. Supp. 2d at 596 ("Generally, motions to reconsider are not appropriate vehicles to advance arguments already rejected by the Court") (internal quotation marks omitted)), *aff'd*, 410 F. App'x 630 (4th Cir. 2011).